

**United States Department of Labor  
Employees' Compensation Appeals Board**

---

**A.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Greensboro, NC, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 13-424  
Issued: June 20, 2013**

*Appearances:*  
*James E. Snyder, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 19, 2012 appellant, through his attorney, filed a timely appeal of an October 16, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

**ISSUE**

The issue is whether appellant has more than a two percent impairment of the left upper extremity entitling him to an additional schedule award.

**FACTUAL HISTORY**

This case has previously been before the Board on appeal. On February 1, 2001 appellant, then a 45-year-old mail processor, filed a traumatic injury claim alleging that on January 30, 2001 he injured his neck which resulted in pain down his left arm and into his left

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

hand. He underwent cervical x-rays on August 2, 1999 which demonstrated reversal of lordosis suggestive of muscular spasm. Appellant underwent a magnetic resonance imaging (MRI) scan which demonstrated significant herniated disc at C4-5 on the left and C7-T1 on the left. A March 18, 2001 MRI scan demonstrated C3-4 focal central disc protrusion. On April 30, 2001 OWCP accepted appellant's claim for herniated disc. Appellant had normal electromyogram (EMG) and nerve conduction velocity results on the left upper extremity on June 26, 2001. On September 10, 2001 he underwent a cervical computerized tomography (CT) scan which demonstrated disc protrusions at C2-3 C3-4, and C7-T1 with disc herniations as C5-6 and C7-T1. On the same date appellant underwent a cervical EMG which demonstrated degenerative disease of the cervical spine.

Appellant filed a recurrence of disability commencing February 14, 2002 due to his January 30, 2001 employment injury. He underwent an MRI scan on April 9, 2002 which demonstrated disc herniations at C4-5, C5-6 and C6-7 with disc protrusion at C3-4 and annual disc bulge at C7-T1. On July 1, 2002 appellant underwent C4-5, C5-6 and C6-7 anterior cervical discectomy and fusion with allograft anterior plate due to C4-5, C5-6 and C6-7 stenosis with myelopathy and radiculopathy. On July 8, 2002 he underwent placement of percutaneous lumbar drain due to cerebrospinal fluid fistula with cerebrospinal fluid pseudomeningocele formation. OWCP accepted the additional condition of aseptic meningitis on September 19, 2002.

Appellant returned to light duty on February 25, 2003. His attending physician, Dr. Henry Pool, a Board-certified neurosurgeon, opined on September 24, 2003 that appellant experienced intermittent thumb numbness and paresthesias which he attributed to chronic C6 nerve root damage.

Appellant filed a claim for schedule award which OWCP granted for two percent impairment of his left upper extremity on November 24, 2003. He requested an oral hearing and on January 21, 2005 the hearing representative affirmed the November 24, 2003 decision. On appeal the Board, by decision dated October 11, 2005, affirmed the findings of two percent impairment of the left upper extremity.<sup>2</sup> The facts and the circumstances of the case as set forth in the Board's prior decision are adopted herein by reference.

On November 1, 2010 appellant's attending physician, Dr. Joseph D. Stern, a Board-certified orthopedic surgeon, recommended a posterior decompression C3-4 and posterior fusion C3-7. In a note dated November 10, 2010, OWCP's medical adviser opined that the proposed back surgery was appropriate and approved. Appellant underwent posterior cervical decompression at C3-5 with lateral mass fixation on December 3, 2010. He returned to his full-duty position on June 20, 2011. On September 28, 2011 appellant reported numbness in his left hand.

Appellant underwent lumbar spine surgery at the Veterans Administration Hospital on January 25, 2012 due to a service-related condition. Dr. Stern examined appellant on February 29, 2012 and noted that appellant had back surgery in January which was not work related. He opined that appellant had 15 percent impairment due to neck pain and loss of range

---

<sup>2</sup> Docket No. 05-824 (issued October 11, 2005).

of motion following the C3-7 posterior decompression and fusion. Appellant requested an increased schedule award on March 2, 2012.

On March 6, 2012 OWCP's medical adviser noted that appellant had previously received two percent impairment due to his left upper extremity. He recommended a detailed electrodiagnostic study of both upper extremities. On May 9, 2012 appellant underwent electromyogram and nerve conduction velocity studies which were interpreted as normal.

OWCP's medical adviser reviewed the record on June 18, 2012 and stated that the May 9, 2012 electrodiagnostic studies demonstrated no evidence of right or left upper extremity radiculopathy.

OWCP referred appellant to Dr. William A. Somers, a Board-certified orthopedic surgeon and second opinion physician, who completed a report on September 28, 2012. He provided appellant's history of injury and noted his spine surgeries on December 3, 2010 and in January 2012. Dr. Somers noted that appellant no longer experienced left arm pain, but had sharp pain in his posterior neck radiating to his left scapula. He noted that appellant demonstrated slightly diminished dexterity in his fingers with limited range of motion in his cervical spine. Dr. Somers stated that appellant had no paresthesias or dysesthesia with Spurling's maneuver and no spasticity in either upper limb. In regard to appellant's lower extremities, he found symmetric reflexes and no spasticity. Dr. Somers diagnosed cervical disc disease aggravated by injury on January 30, 2011, C7 disc herniation and radiculopathy and noted appellant's cervical spine surgeries. He stated that appellant did not have major evidence of myelopathy, but had a little dexterity loss in his hands as well as balance changes due to limited motion in his cervical spine. Dr. Somers opined that appellant's limited range of motion in the neck produced a significant impairment, but that this impairment was not recognized by OWCP. He provided an impairment rating based on appellant's spine and concluded that appellant had 19 percent impairment. Dr. Somers stated, "Because he does have some subtle findings of very mild myelopathic changes such as decreased dexterity and some clumsiness in the hands as well as some station and gait problems, I have looked at Chapter 13,<sup>3</sup> Table 11 and Table 12 and [have] come up with upper extremity dysfunction class 1 equaling one percent for his dominant right hand and one percent for his nondominant left hand...." He also included appellant's lumbar spine and reached seven percent impairment of the whole person related to spinal cord dysfunction.

An OWCP medical adviser reviewed medical evidence and noted that FECA did not recognize the spine as a scheduled member. He noted that appellant had no findings in the upper or lower extremities. OWCP's medical adviser stated, "In summary, the 13 percent whole person for cervical spine and 7 percent whole person for the spinal cord dysfunction [are] not supported by evidence and OWCP policy."

By decision dated October 16, 2012, OWCP denied appellant's claim for an additional schedule award as the medical evidence did not address an accepted scheduled member.

---

<sup>3</sup> A.M.A., *Guides*, pp. 321-45, The Central and Peripheral Nervous System.

## LEGAL PRECEDENT

The schedule award provision of FECA<sup>4</sup> and its implementing regulations<sup>5</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment for loss of use, of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.<sup>6</sup>

FECA does not authorize the payment of schedule awards for the permanent impairment of the whole person.<sup>7</sup> Payment is authorized only for the permanent impairment of specified members, organs or functions of the body.

No schedule award is payable for a member, function or organ of the body not specified in FECA or in the regulations.<sup>8</sup> Because neither FECA nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back or spine,<sup>9</sup> no claimant is entitled to such an award.<sup>10</sup>

Amendments to FECA, however, modified the schedule award provisions to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. As the schedule award provisions of FECA include the extremities, a claimant may be entitled to a schedule award for permanent impairment to a limb even though the cause of the impairment originated in the spine.<sup>11</sup>

The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as extremity impairment. Recognizing that certain jurisdictions, such as federal claims under FECA, mandate ratings for extremities and preclude ratings for the spine,

---

<sup>4</sup> 5 U.S.C. §§ 8101-8193, 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> For new decisions issued after May 1, 2009 OWCP began using the sixth edition of the A.M.A., *Guides*. A.M.A., *Guides*, 6<sup>th</sup> ed. (2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6a (January 2010); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

<sup>7</sup> *W.D.*, Docket No. 10-274 (issued September 3, 2010); *Ernest P. Govednick*, 27 ECAB 77 (1975).

<sup>8</sup> *W.D.*, *id.*; *William Edwin Muir*, 27 ECAB 579 (1976).

<sup>9</sup> FECA itself specifically excludes the back from the definition of organ. 5 U.S.C. § 8101(19).

<sup>10</sup> *W.D.*, *supra* note 7. *Timothy J. McGuire*, 34 ECAB 189 (1982).

<sup>11</sup> *W.D.*, *supra* note 7. *Rozella L. Skinner*, 37 ECAB 398 (1986).

the A.M.A., *Guides* has offered an approach to rating spinal nerve impairments consistent with sixth edition methodology.<sup>12</sup> OWCP has adopted this approach for rating impairment of the upper or lower extremities caused by a spinal injury, as provided in section 3-700 of its procedures.<sup>13</sup> Specifically, it will address lower extremity impairments originating in the spine through Table 16-11<sup>14</sup> and upper extremity impairment originating in the spine through Table 15-14.<sup>15</sup> The impairment is premised on evidence of radiculopathy affecting the upper or lower extremities.<sup>16</sup>

### ANALYSIS

OWCP accepted that appellant sustained a neck strain and herniated disc at C4-5, C5-6 and C6-7 as well as meningitis due to his January 30, 2001 employment injury. Appellant underwent spine surgeries on July 1, 2002 and December 3, 2010. He received a schedule award for two percent impairment of his left upper extremity on November 24, 2003. Appellant's attending physician, Dr. Stern, opined that appellant had 15 percent permanent impairment due to neck pain and loss of range of motion of the cervical spine on February 29, 2012.

OWCP undertook additional development of the medical evidence and requested electrodiagnostic studies which were interpreted as normal with no radiculopathy in the extremities. It then referred appellant to Dr. Somers for a second opinion evaluation. In his September 28, 2012 report, Dr. Somers noted that appellant demonstrated slightly diminished dexterity in his fingers with limited range of motion in his cervical spine. He stated that appellant had no paresthesias or dysesthesia with Spurling's maneuver and no spasticity in either upper limb. Dr. Somers provided an impairment rating based on appellant's spine and concluded that appellant had 19 percent impairment. He further found that appellant had findings of very mild myelopathic changes such as decreased dexterity and some clumsiness in the hands and applied Chapter 13,<sup>17</sup> Table 11 and Table 12 of the A.M.A., *Guides* to reach one percent impairment of each upper extremity. Dr. Somers also included appellant's lumbar spine and reached seven percent impairment of the whole person related to spinal cord dysfunction.

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser

---

<sup>12</sup> FECA Transmittal No. 10-04 (issued January 9, 2010); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Exhibit 4 (January 2010).

<sup>13</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700 (January 2010) (Exhibits 1, 4).

<sup>14</sup> A.M.A., *Guides* 533, Table 16-11.

<sup>15</sup> *Id.* at 425, Table 15-14.

<sup>16</sup> *Supra* note 13. *J.S.*, Docket No. 13-381 (issued April 26, 2013).

<sup>17</sup> A.M.A., *Guides*, pp. 321-45, The Central and Peripheral Nervous System.

providing rationale for the percentage of impairment specified.<sup>18</sup> While FECA does not provide for a schedule award for the back or spine, impairment of the extremities due to a spinal injury may be compensable.<sup>19</sup> The medical adviser reviewed the medical evidence of record and opined that there was no ratable upper extremity impairment. He noted that appellant had no findings in the upper or lower extremities. The medical adviser concluded that the impairment ratings for the cervical and lumbar spines were not appropriate. For peripheral nerve impairments to the upper or lower extremities resulting from spinal injuries, OWCP procedures indicate that *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment* using the sixth edition (July to August 2009) is to be applied.<sup>20</sup> Impairments are rated premised on evidence of radiculopathy affecting the upper and/or lower extremities.<sup>21</sup> The medical adviser found that Drs. Stern and Somers failed to adequately describe any upper extremity impairment and there was no objective evidence to support any impairment. Thus, he properly concluded that there was no credible impairment of the upper extremities based on the accepted conditions of cervical sprain and disc herniation.

The medical evidence does not establish that appellant has permanent impairment to a scheduled member of the body causally related to his accepted injury. Consequently, appellant has not established entitlement to a schedule award.

Appellant may request a schedule award or an increased schedule award based on evidence of a new exposure or medical evidence showing a progression of an employment-related condition resulting in permanent impairment or increased impairment.

### CONCLUSION

The Board finds that appellant has not established an additional schedule award due to impairment to a scheduled member.

---

<sup>18</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

<sup>19</sup> See *Thomas J. Engelhart*, 50 ECAB 319 (1999).

<sup>20</sup> See *G.N.*, Docket No. 10-850 (issued November 12, 2010); see also Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1, note 5 (January 2010).

<sup>21</sup> See *N.F.*, Docket No. 13-129 (issued March 15, 2013).

**ORDER**

**IT IS HEREBY ORDERED THAT** October 16, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 20, 2013  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board